

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Vazquez v. Diamondrock Hospitality Co.

100 A.D.3d 502 (1st Dep't 2012) · Decided November 15, 2012

SUMMARY

The court modified a judgment dismissing claims against the hotel owner, Diamondrock Hospitality Company, and its management company, Courtyard Management Corporation. It held that Diamondrock did not establish that it had completely relinquished possession and control of the premises and therefore could remain subject to claims concerning its nondelegable duty to maintain the elevators. The court upheld dismissal of claims against Courtyard under the Workers' Compensation Law exclusivity bar and declined to reinstate the plaintiff's complaint because the plaintiff had not appealed.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Friedman, J.P.; Catterson, J.; Renwick, J.; DeGrasse, J.; Román, J.
JURISDICTION	New York
DECIDED	November 15, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a judgment of Supreme Court, Bronx County, dismissing the complaint and all cross claims against Diamondrock Hospitality Company and Courtyard Management Corporation, and review of the underlying order granting defendants' motion for summary judgment.
STANDARD OF REVIEW	De novo review of summary judgment; the evidence is viewed in the light most favorable to the nonmoving parties, and the moving party must establish entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	published and precedential New York appellate decision

TOPICS

premises liability

duty of care

summary judgment

civil procedure

real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Diamondrock, as the owner of a hotel and elevator premises, established that it had completely parted with possession and control so as to avoid liability as an out-of-possession owner.
2. Whether Diamondrock's management agreement with Courtyard conclusively established that Diamondrock had no right or responsibility regarding operation and maintenance of the building.
3. Whether the cross claims against Courtyard were barred by the Workers' Compensation Law because Marriott, plaintiff's employer, was Courtyard's alter ego.
4. Whether the complaint should be reinstated when plaintiff did not appeal from its dismissal.

HOLDINGS

1. Diamondrock was not entitled to summary judgment dismissing the cross claims because it failed to establish that it had completely parted with possession and control of the hotel premises and therefore failed to eliminate its potential liability as an out-of-possession owner.
2. The dismissal of the cross claims against Courtyard was proper because the record established that Courtyard was protected by the Workers' Compensation Law exclusivity bar through its alter-ego relationship with Marriott, plaintiff's employer.
3. The complaint was not reinstated because plaintiff did not appeal, and the appellants could receive full relief without reinstatement.

KEY QUOTATIONS

"It is also undisputed that the premises is a hotel, which is a multiple dwelling under Multiple Dwelling Law § 4 (9)." (502)

"Diamondrock failed to meet its burden of establishing that it had "completely parted with possession and control" of the premises such that it, as an out-of-possession owner, should be exempt from liability" (503)

"Viewing the evidence in a light most favorable to the nonmovants, the management agreement does not "irrefutably establish" that Diamondrock "had no right or responsibility regarding the operations of the building itself" (503)

FACTUAL BACKGROUND

Diamondrock owned a hotel premises containing elevators, and Courtyard managed the hotel. Diamondrock's management agreement with Courtyard was not a lease and reserved Diamondrock several rights concerning maintenance, repair, restoration, operation, and operation of the hotel or common elements. The record also demonstrated that Marriott, plaintiff's employer, was Courtyard's alter ego, supporting application of the Workers' Compensation Law exclusivity bar to the cross claims against Courtyard.

PROCEDURAL HISTORY

Supreme Court granted defendants' motion for summary judgment and entered judgment dismissing the complaint and all cross claims against Diamondrock and Courtyard. The Appellate Division modified the judgment by denying Diamondrock's motion insofar as it sought dismissal of the cross claims against it and converting the cross claim against Diamondrock to a third-party claim. The judgment was otherwise affirmed, including dismissal of the cross claims against Courtyard and refusal to reinstate the complaint because plaintiff did not appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

Diamondrock's motion for summary judgment was denied insofar as it sought dismissal of the cross claims against it, and the cross claim against Diamondrock was converted to a third-party claim. The judgment was otherwise affirmed.

CASES CITED

- Isaac v. 1515 Macombs, LLC, 84 A.D.3d 457 (1st Dep't 2011), leave to appeal denied, 17 N.Y.3d 708 (2011)
- Mas v. Two Bridges Assocs., 75 N.Y.2d 680, 687-688 (1990)
- Rogers v. Dorchester Assocs., 32 N.Y.2d 553, 563 (1973)
- Worth Distribs. v. Latham, 59 N.Y.2d 231, 238 (1983)
- Bonifacio v. 910-930 S. Blvd., 295 A.D.2d 86, 89 (1st Dep't 2002)
- Cruceta v. Funnel Equities, 286 A.D.2d 747 (2d Dep't 2001)
- Hecht v. City of New York, 60 N.Y.2d 57 (1983)

OPINION

PER CURIAM.

Judgment, Supreme Court, Bronx County (Mary Ann Brigantti-Hughes, J.), entered August 11, 2011, to the extent appealed from as limited by the briefs, dismissing the complaint and all cross claims as against defendants Diamondrock Hospitality Company (Diamondrock) and Courtyard Management Corporation (Courtyard), and bringing up for review an order, same court and Justice, entered on or about April 18, 2011, which granted defendants' motion for summary judgment dismissing the complaint and all cross claims as against them, unanimously modified, on the law, the motion of Diamondrock for summary judgment to the extent it sought dismissal of the cross claims as against it denied, the cross claim against Diamondrock converted to a third-party claim, and otherwise affirmed, without costs.

The motion for summary judgment should have been denied insofar as it sought dismissal of the cross claims as against Diamondrock. It is undisputed that Diamondrock owns the subject

premises and, as such, has a common-law duty to keep the premises in a reasonably safe condition, which duty extends to elevators on its premises (see *Isaac v 1515 Macombs, LLC*, 84 AD3d 457 [1st Dept 2011], lv denied 17 NY3d 708 [2011]).

It is also undisputed that the premises is a hotel, which is a multiple dwelling under Multiple Dwelling Law § 4 (9). Thus, Diamondrock has a nondelegable duty to maintain and repair elevators on its premises under Multiple Dwelling Law § 78 (see *Mas v Two Bridges Assoc.*, 75 NY2d 680, 687-688 [1990]; *Rogers v Dorchester Assoc.*, 32 NY2d 553, 563 [1973]). Diamondrock failed to meet its burden of establishing that it had “completely parted with possession and control” of the premises such that it, as an out-of-possession owner, should be exempt from liability (*Worth Distribs. v Latham*, 59 NY2d 231, 238 [1983]).

Diamondrock’s reliance on its management agreement with Courtyard is unavailing because that agreement is not a lease and reserves several rights in Diamondrock’s favor. This includes “the right to enforce compliance with respect to *503the maintenance, repair, restoration or operation” of the premises, “any other right necessary to maintain and/or operate the Hotel or Common Elements.” Viewing the evidence in a light most favorable to the nonmovants, the management agreement does not “irrefutably establish” that Diamondrock “had no right or responsibility regarding the operations of the building itself” (*Bonifacio v 910-930 S. Blvd.*, 295 AD2d 86, 89 [1st Dept 2002]).

The cross claims as against Courtyard were correctly dismissed as on this record there is no question as to whether Courtyard is protected by the Workers’ Compensation Law exclusivity bar. The record demonstrates that Marriott, plaintiffs employer, is Courtyard’s alter ego. It has failed to show that discovery regarding Marriott and Courtyard’s relationship is necessary or that material defining that relationship is in their exclusive possession (see CPLR 3212 [f]; see also *Cruceta v Funnel Equities*, 286 AD2d 747 [2d Dept 2001]).

We decline to reinstate the complaint since plaintiff has not appealed, and full relief can be afforded to appellants without reinstating the complaint (see *Hecht v City of New York*, 60 NY2d 57 [1983]). Concur — Friedman, J.R, Catterson, Renwick, DeGrasse and Román, JJ.